

Underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 1236

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MICHAEL S. SANCHEZ

AN ACT

RELATING TO WATER; ENACTING THE GROUND WATER STORAGE AND  
RECOVERY ACT; PROVIDING PENALTIES; ENACTING NEW SECTIONS OF THE  
NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new Section 72-20-1 NMSA 1978 is enacted to  
read:

"72-20-1. [NEW MATERIAL] SHORT TITLE. -- Chapter 72,  
Article 20 NMSA 1978 may be cited as the "Ground Water Storage  
and Recovery Act". "

Section 2. A new Section 72-20-2 NMSA 1978 is enacted to  
read:

"72-20-2. [NEW MATERIAL] LEGISLATIVE FINDINGS. -- The  
legislature finds that:

A. the state has long recognized that the

Underscored material = new  
[bracketed material] = delete

1 conjunctive use and administration of surface and ground waters  
2 are essential to the effective and efficient use of the state's  
3 limited water supplies; and

4 B. ground-water recharge, storage and recovery:

5 (1) offer potential savings in capital  
6 investment, operation and maintenance costs, flood control and  
7 water quality protection or enhancement costs, as well as the  
8 potential for maintaining or improving environmental quality;

9 (2) reduce the rate at which ground-water  
10 levels will decline and may prevent overstressing or dewatering  
11 aquifer systems;

12 (3) promote conservation of water within the  
13 state;

14 (4) serve the public welfare of the state; and

15 (5) may lead to more effective use of the  
16 state's water resources. "

17 Section 3. A new Section 72-20-3 NMSA 1978 is enacted to  
18 read:

19 "72-20-3. [NEW MATERIAL] DEFINITIONS. --As used in the  
20 Ground Water Storage and Recovery Act:

21 A. "aquifer" means a geologic formation that  
22 contains sufficient saturated material to be capable of storing  
23 and transmitting water in usable quantities to a well and as  
24 such is a "storage reservoir" within the meaning of Section  
25 72-5-28 NMSA 1978;

1           B. "area of hydrologic effect" means the underground  
2 area where the water is stored and is located, adjacent  
3 underground areas in which water rights exist that may be  
4 impaired, the land surface projected above the underground areas  
5 and any additional land surface used for seepage or  
6 infiltration;

7           C. "permit" means a recharge and recovery permit  
8 granted pursuant to the Ground Water Storage and Recovery Act;

9           D. "permittee" means a person to whom a recharge and  
10 recovery permit has been granted pursuant to the Ground Water  
11 Storage and Recovery Act;

12           E. "person" means an individual or any legal entity,  
13 the state or any of its branches, agencies, departments, boards,  
14 instrumentalities or institutions, or any political subdivision  
15 of the state and its agencies, instrumentalities or  
16 institutions;

17           F. "project" means an engineered facility designed,  
18 constructed and operated to add water by injection or  
19 infiltration to an aquifer or system of aquifers, to store the  
20 water underground and to recover the water pursuant to a permit  
21 issued pursuant to the Ground Water Storage and Recovery Act;  
22 and

23           G. "stored water" means water that has been stored  
24 underground for the purpose of recovery pursuant to a permit  
25 issued pursuant to the Ground Water Storage and Recovery Act."

Underscored material = new  
[bracketed material] = delete

1 Section 4. A new Section 72-20-4 NMSA 1978 is enacted to  
2 read:

3 "72-20-4. [NEW MATERIAL] PERMIT REQUIRED FOR PROJECT. --  
4 Any person desiring to operate a project shall apply for and may  
5 receive a permit to operate the project from the state  
6 engineer. "

7 Section 5. A new Section 72-20-5 NMSA 1978 is enacted to  
8 read:

9 "72-20-5. [NEW MATERIAL] APPLICATION FOR PROJECT PERMIT--  
10 FILING FEE--REQUIRED INFORMATION. --The state engineer shall  
11 prescribe and furnish application forms for a project permit.  
12 The application to operate a project shall include the  
13 following:

14 A. an application fee in the amount of two hundred  
15 fifty dollars (\$250);

16 B. the name and mailing address of the applicant;

17 C. the name and mailing address of the owner of the  
18 land on which the applicant proposes to operate the project;

19 D. the name of the declared underground water basin  
20 in which the applicant proposes to operate the project;

21 E. the legal description of the location of the  
22 proposed project;

23 F. evidence of financial and technical capability;

24 G. the source, annual quantity and quality of water  
25 proposed to be injected and the quality of water in the

Underscored material = new  
[bracketed material] = delete

1 receiving aquifer;

2 H. the legal basis for acquiring and using the water  
3 proposed to be injected;

4 I. the identification, characteristics, capacity and  
5 location of each recharge and recovery well;

6 J. a description of the proposed project, including  
7 its capacity, plan of operation and percentage of anticipated  
8 recoverable water;

9 J. a study:

10 (1) showing the area of hydrologic effect of  
11 the project;

12 (2) demonstrating that the project is  
13 hydrologically feasible;

14 (3) demonstrating that the project will not  
15 impair existing water rights within the area of hydrologic  
16 effect;

17 (4) demonstrating that the project will not be  
18 contrary to the conservation of water within the state; and

19 (5) demonstrating that the project will not be  
20 detrimental to the public welfare of the state;

21 K. the proposed duration of the permit; and

22 L. any further information required by the state  
23 engineer. "

24 Section 6. A new Section 72-20-6 NMSA 1978 is enacted to  
25 read:

. 116825. 1

Underscored material = new  
[bracketed material] = delete

1 "72-20-6. [NEW MATERIAL] REVIEW OF APPLICATION FOR  
2 PERMIT--NOTICE--PROTESTS--HEARINGS--DETERMINATIONS--JUDICIAL  
3 REVIEW.--

4 A. Upon receipt of an application for a permit to  
5 operate a project, the state engineer shall endorse on the  
6 application the date it was received and shall keep a record of  
7 the application. The state engineer shall conduct an initial  
8 review of the application within sixty days of receipt. If the  
9 state engineer determines in the initial review that the  
10 application is incomplete, the state engineer shall notify the  
11 applicant of the application's deficiencies. The application  
12 shall remain incomplete until the applicant provides all  
13 information required by Section 72-20-5 NMSA 1978. The state  
14 engineer may request additional information from the applicant  
15 and may conduct an independent investigation of the project as  
16 is necessary for the state engineer to determine whether to  
17 approve the application.

18 B. Within thirty days after determining that an  
19 application is complete, or longer if requested by the  
20 applicant, the state engineer shall cause notice of the  
21 application to be given in a newspaper of general circulation in  
22 the county in which persons reside who could reasonably be  
23 expected to be affected by the project, as determined by the  
24 state engineer. The notice shall be given once a week for three  
25 consecutive weeks and shall set forth:

. 116825. 1

1 (1) the legal description of the location of  
2 the proposed project;

3 (2) a brief description of the proposed  
4 project, including its capacity;

5 (3) the name of the applicant;

6 (4) the date of the last publication; and

7 (5) the requirements for a protest to be deemed  
8 validly filed and asserted, as set forth in Subsection C of this  
9 section.

10 C. To be validly filed and asserted, a protest to a  
11 proposed project shall:

12 (1) be filed by any person directly or  
13 substantively and specifically affected by the granting of the  
14 application for the proposed project and based upon the failure  
15 of the project to comply with the required determinations of the  
16 state engineer as set forth in Subsection A of Section 72-20-7  
17 NMSA 1978;

18 (2) be in writing, contain the name and mailing  
19 address of the protestor, identify as grounds for the protest  
20 the requirements of Section 72-20-7 NMSA 1978 that the protestor  
21 asserts are not complied with by the project and contain the  
22 signature of the protestor or the legal representative of the  
23 protestor; and

24 (3) be filed with the state engineer within ten  
25 days after the last publication date of the notice of the

Underscored material = new  
[bracketed material] = delete

1 application.

2 D. Upon receipt of a validly asserted and filed  
3 protest, the state engineer shall advise the applicant, by  
4 certified mail, that a protest has been filed.

5 E. Upon receipt of a validly asserted and filed  
6 protest, or upon his own motion for good cause, the state  
7 engineer may schedule a hearing on the application, providing no  
8 less than thirty days prior notice of the hearing, by certified  
9 mail, to the applicant and any protestor.

10 F. The state engineer shall either approve or deny  
11 each application within one year after the final date for filing  
12 a protest on the application, unless, in the case of an  
13 unprotested application, the state engineer has received a  
14 written request from the applicant to postpone a decision on the  
15 application; or, in the case of a protested application, the  
16 state engineer has received a written request from the applicant  
17 and all protestors to postpone the decision.

18 G. Any person aggrieved by any decision of the state  
19 engineer made pursuant to Subsection F of this section may  
20 appeal that decision to the district court pursuant to Section  
21 72-7-1 NMSA 1978. "

22 Section 7. A new Section 72-20-7 NMSA 1978 is enacted to  
23 read:

24 "72-20-7. [NEW MATERIAL] PERMIT ISSUANCE-- CONTENTS OF  
25 PERMIT-- MONITORING REQUIREMENTS. --

Underscored material = new  
[bracketed material] = delete

1           A. The state engineer shall, upon application, issue  
2 a permit to operate a project if the state engineer determines  
3 that:

4                   (1) the applicant has the technical and  
5 financial capability to construct and operate the project;

6                   (2) the applicant has:

7                           (a) a valid water right for the use of  
8 the water proposed to be stored underground; or

9                           (b) an agreement to use the water  
10 proposed to be stored underground with an owner who has a valid  
11 water right for the use of the water, provided that any  
12 determination made by the state engineer for purposes of this  
13 subparagraph is not binding upon the state engineer or his  
14 office in any other proceeding;

15                   (3) the project is hydrologically feasible;

16                   (4) the project will not impair existing water  
17 rights within the area of hydrologic effect of the project;

18                   (5) the project will not be contrary to the  
19 conservation of water within the state; and

20                   (6) the project will not be detrimental to the  
21 public welfare of the state.

22           B. A permit for a project shall include:

23                   (1) the name and mailing address of the person  
24 to whom the permit is issued;

25                   (2) the name of the declared underground water

Underscored material = new  
[bracketed material] = delete

1 basin in which the project will be located;

2 (3) the capacity and plan of operation of the  
3 project;

4 (4) any monitoring program required pursuant to  
5 Subsection C of this section;

6 (5) any conditions that are imposed by or  
7 regulations adopted pursuant to the Ground Water Storage and  
8 Recovery Act; and

9 (6) other information that the state engineer  
10 determines is necessary.

11 C. The state engineer shall require the permittee to  
12 monitor the operation of the project and its effect on other  
13 water users in the area of hydrologic effect. In determining  
14 monitoring requirements, the state engineer shall cooperate with  
15 all government entities that regulate and monitor the quality of  
16 water, including the department of environment. Nothing in this  
17 article limits or precludes the application or operation of  
18 other statutes to a project. "

19 Section 8. A new Section 72-20-8 NMSA 1978 is enacted to  
20 read:

21 "72-20-8. [NEW MATERIAL] MODIFICATION AND ASSIGNMENT OF  
22 PROJECT PERMIT. --

23 A. The state engineer, on his own initiative or at  
24 the request of any permittee, may modify the conditions of a  
25 permit if he finds that modifications are necessary and will not

Underscored material = new  
[bracketed material] = delete

1 impair existing water rights or the water quality of the  
2 aquifer.

3 B. Before any permit condition is modified, the  
4 state engineer may require that notice be given to potentially  
5 impaired water users if he finds that the proposed modification  
6 may impair existing water rights.

7 C. The permittee may apply to the state engineer for  
8 approval to assign a permit to another person. The state  
9 engineer shall approve the assignment if the person to whom the  
10 permit is to be assigned will meet the requirements of  
11 Paragraphs (1) and (2) of Subsection A of Section 72-20-7 NMSA  
12 1978 when the assignment is completed. "

13 Section 9. A new Section 72-20-9 NMSA 1978 is enacted to  
14 read:

15 "72-20-9. [NEW MATERIAL] PERMIT FOR RECOVERY WELL--  
16 RECOVERY LIMITED TO DESIGNATED WELLS-- DESIGNATION OF PERSON  
17 ENTITLED TO RECOVER WATER-- USE OR EXCHANGE OF RECOVERED WATER. --

18 A. A permittee shall comply with the requirements of  
19 the Ground Water Storage and Recovery Act and Sections 72-12-1  
20 through 72-12-28 NMSA 1978 to acquire a permit for a recovery  
21 well.

22 B. A permittee may recover stored water pursuant to  
23 a recovery well permit only from wells located within the area  
24 of hydrologic effect of the project and approved for such  
25 purpose by the state engineer.

. 116825. 1

Underscored material = new  
[bracketed material] = delete

1 C. A person entitled to recover stored water shall  
2 be designated by the permittee and approved for such purpose by  
3 the state engineer.

4 D. A permittee may use or exchange water recovered  
5 only for the same purposes as the water was used before it was  
6 stored, unless a change or exchange application is filed and  
7 approved pursuant to Sections 72-5-23, 72-5-24 or 72-12-7 NMSA  
8 1978, as applicable."

9 Section 10. A new Section 72-20-10 NMSA 1978 is enacted to  
10 read:

11 "72-20-10. [NEW MATERIAL] STORAGE ACCOUNT TO BE  
12 ESTABLISHED--LIMIT ON AMOUNT OF WATER RECOVERED.--

13 A. The state engineer shall establish a storage  
14 account for each permitted project. If the permitted project  
15 has stored water from more than one source, he shall establish  
16 subaccounts for each source of water.

17 B. A permittee may recover only the recoverable  
18 amount of stored water from a well. For purposes of this  
19 section, "recoverable amount" means that amount of water, as  
20 determined by the state engineer, that has reached the aquifer,  
21 remained within the area of hydrologic effect and is conducive  
22 to recovery."

23 Section 11. A new Section 72-20-11 NMSA 1978 is enacted to  
24 read:

25 "72-20-11. [NEW MATERIAL] ANNUAL REPORT TO STATE

Underscored material = new  
[bracketed material] = delete

1 ENGINEER-- PENALTY FOR FAILURE TO FILE. --

2 A. Each permittee shall file a report with the state  
3 engineer to annually account for:

4 (1) the total quantity of stored water and  
5 recovered water;

6 (2) the water quality of the stored water, the  
7 receiving aquifer and the recovered water; and include

8 (3) a sworn statement or certification, given  
9 under penalty of perjury, attesting to the truthfulness and  
10 accuracy of the report's data.

11 B. The annual report shall be maintained on a  
12 calendar-year basis and shall be filed with the state engineer  
13 no later than March 31 for the preceding year. If a person  
14 required to file an annual report fails to do so when due, the  
15 state engineer may assess and impose a penalty of five hundred  
16 dollars (\$500) for each month or portion of a month that the  
17 report is not filed. The total penalty assessed under this  
18 subsection shall not exceed five thousand dollars (\$5,000).

19 C. All records and reports required to be maintained  
20 and filed pursuant to this section shall be in a form prescribed  
21 by the state engineer. "

22 Section 12. A new Section 72-20-12 NMSA 1978 is enacted to  
23 read:

24 "72-20-12. [NEW MATERIAL] REVOCATION OR SUSPENSION OF  
25 PERMIT-- ORDERS TO CEASE AND DESIST-- INJUNCTION. --

Underscored material = new  
[bracketed material] = delete

1           A. The state engineer may periodically review a  
2 project to determine if the permittee is complying with the  
3 terms and conditions of the permit. The state engineer may  
4 permanently revoke or temporarily suspend a permit for good  
5 cause after an investigation and a hearing. Notice shall be  
6 sent, by certified mail, to the permittee at least thirty days  
7 before any hearing on a revocation or suspension disclosing the  
8 permittee's alleged failure to comply with the permit's terms  
9 and conditions.

10           B. Except as otherwise provided in Subsection C of  
11 this section, if the state engineer has reason to believe that a  
12 person has violated a provision of the Ground Water Storage and  
13 Recovery Act or a permit issued or regulation adopted pursuant  
14 to that act, the state engineer may issue a written notice that  
15 the person appear and show cause, at a hearing before the state  
16 engineer not less than fifteen days after the receipt of the  
17 notice, why the person should not be ordered to cease and desist  
18 from the violation. The notice shall inform the person of the  
19 date, time and place of the hearing and the consequences of the  
20 person's failure to appear.

21           C. If the state engineer finds that a person is  
22 constructing or operating a project in violation of the Ground  
23 Water Storage and Recovery Act, the state engineer may issue a  
24 temporary order for the person to cease and desist the  
25 construction or operation pending final action by the state

Underscored material = new  
[bracketed material] = delete

1 engineer pursuant to Subsection D of this section. The order  
2 shall include written notice to the person of the date, time and  
3 place where the person shall appear at a hearing before the  
4 state engineer to show cause why the temporary order should be  
5 vacated. The hearing shall be held not less than fifteen days  
6 after the date of the order.

7 D. After a hearing pursuant to Subsection B or C of  
8 this section, or after the expiration of the time to appear, the  
9 state engineer shall issue a decision and order. The decision  
10 and order shall be in a form as the state engineer determines to  
11 be reasonable and appropriate and may include a determination of  
12 violation, an order to cease and desist, the recommendation of a  
13 civil penalty and an order directing that positive steps be  
14 taken to abate or ameliorate any harm or damage arising from the  
15 violation. Any person affected may appeal the decision to the  
16 district court pursuant to Section 72-7-1 NMSA 1978.

17 E. If a person continues a violation after the state  
18 engineer has issued a decision and order pursuant to Subsection  
19 D of this section or a temporary order pursuant to Subsection C  
20 of this section, the state engineer may apply for a temporary  
21 restraining order or a preliminary or permanent injunction from  
22 the district court. A decision to seek injunctive relief does  
23 not preclude other forms of relief or enforcement against a  
24 violator. "

25 Section 13. A new Section 72-20-13 NMSA 1978 is enacted to

Underscored material = new  
[bracketed material] = delete

1 read:

2 "72-20-13. [NEW MATERIAL] PENALTIES. --

3 A. A person who is determined pursuant to Section  
4 72-20-12 NMSA 1978 to be in violation of the Ground Water  
5 Storage and Recovery Act or a permit issued or regulation  
6 adopted pursuant to that act may be assessed a civil penalty in  
7 an amount not exceeding:

8 (1) one hundred dollars (\$100) per day of  
9 violation not directly related to illegal recovery or use of  
10 stored water; or

11 (2) ten thousand dollars (\$10,000) per day of  
12 violation directly related to illegal recovery or use of stored  
13 water.

14 B. An action to recover penalties pursuant to this  
15 section shall be brought by the state engineer in the district  
16 court in which the violation occurred. "

17 - 16 -

18

19

20

21

22

23

24

25